



February 6, 2001

HOUSE BILL No. 1796

DIGEST OF HB 1796 (Updated January 30, 2001 12:00 PM - DI 96)

Citations Affected: IC 22-5.

Synopsis: Employee access to personnel records. Provides that an employer, upon written request from the employee, shall provide an employee with an opportunity to review the employee's personnel records on a periodic basis. Provides a procedure if the employee disagrees with the information contained in the personnel record. Prohibits an employer from gathering or keeping a record of an employee's associations, political activities, publications, or communications of activities outside employment, subject to certain exceptions. Provides that if an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, then the employer may keep a separate file of information relating to the investigation. Provides that a court may award damages to an employee if the employer violates any of these provisions, along with attorney's fees and court costs.

Effective: July 1, 2001.

Cheney, Liggett

January 17, 2001, read first time and referred to Committee on Labor and Employment.
February 5, 2001, reported — Do Pass.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1796

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-5-3-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who, after having
3 discharged any employee from his service, prevents the discharged
4 employee from obtaining employment with any other person commits
5 a Class C infraction and is liable in penal damages to the discharged
6 employee to be recovered by civil action; but this subsection does not
7 prohibit a person from informing, in writing, any other person to whom
8 the discharged employee has applied for employment a truthful
9 statement of the reasons for the discharge.
10 (b) An employer that discloses information about a current or
11 former employee is immune from civil liability for the disclosure and
12 the consequences proximately caused by the disclosure, unless it is
13 proven by a preponderance of the evidence that the information
14 disclosed was known to be false at the time the disclosure was made.
15 **The disclosure of information must be made in accordance with**
16 **IC 22-5-6-9.**
17 (c) Upon written request by the prospective employee, the

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prospective employer will provide copies of any written communications from current or former employers that may affect the employee's possibility of employment with the prospective employer. The request must be received by the prospective employer not later than thirty (30) days after the application for employment is made to the prospective employer.

SECTION 2. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 6. Employee's Access to Personnel Records

Sec. 1. As used in this chapter, "employee" means an individual employed or permitted to work or perform any service for remuneration or under any contract of hire, written or oral, express or implied, by an employer in any occupation.

Sec. 2. As used in this chapter, "employer" means an individual, a partnership, an association, a limited liability company, a corporation, a business trust, the state, or other governmental agency or political subdivision with at least four (4) employees.

Sec. 3. As used in this chapter, "personnel record" means a record kept by an employer that identifies the employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action.

Sec. 4. A personnel record must include a record in the possession of a person, corporation, partnership, or other association that has a contractual agreement with the employer to keep or supply a personnel record as provided in this chapter. A personnel record may not include:

- (1) Employee references supplied to an employer if the identity of the person making the reference would be disclosed.
- (2) Materials relating to the employer's staff planning with respect to more than one (1) employee, including salary increases, management bonus plans, promotions, and job assignments.
- (3) Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved.
- (4) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other



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person's privacy.

(5) Information that is kept separately from other records and that relates to an investigation by the employer under section 11 of this chapter.

(6) Records limited to grievance investigations that are kept separately and are not used for the purposes provided in this chapter.

(7) Records maintained by an educational institution that are directly related to a student and are considered to be education records under Title 5, Section 513(a) of the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

(8) Records kept by an executive, an administrative, or a professional employee that are kept in the sole possession of the maker of the record and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept under this subdivision may be entered into a personnel record if entered not more than six (6) months after the date of the occurrence or the date the fact becomes known.

Sec. 5. (a) Personnel record information that was not included in the personnel record but should have been as required by this chapter shall not be used by an employer in a judicial or administrative proceeding.

(b) Personnel record information that, in the opinion of the judge in a judicial proceeding or in the opinion of the hearing officer in an administrative proceeding was not intentionally excluded in the personnel record, may be used by the employer in the judicial or administrative proceeding if the employee agrees or if the employee has been given a reasonable time to review the information.

(c) Material that should have been included in the personnel record shall be used at the request of the employee.

Sec. 6. (a) An employer, upon written request that describes the personnel record, shall provide the employee with an opportunity to periodically review at reasonable intervals, and not more than twice in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee.

(b) The review must take place at a location reasonably near the employee's place of employment and during normally scheduled hours of employment for the employee. If an employee

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demonstrates that the employee is unable to review the personnel record at the employing unit or at a location reasonably near the employee's place of employment and during normal office hours, the employer, upon the employee's written request, shall mail a copy of the requested record to the employee.

(c) If a review during normally scheduled hours of employment for the employee would require the employee to take time off from work with that employer, the employer shall provide some other reasonable time for the review.

Sec. 7. (a) After the review provided in section 6(a) of this chapter, an employee may obtain a copy of the information or part of the information contained in the employee's personnel record.

(b) An employer may charge a fee for providing a copy of information contained in the personnel record. The fee shall be limited to the actual incremental cost of duplicating the information.

Sec. 8. (a) If there is a disagreement concerning information contained in a personnel record, removal or correction of that information may be mutually agreed upon by the employer and the employee.

(b) If an agreement is not reached, the employee may submit a written statement explaining the employee's position. The statement may not exceed five (5) sheets of eight and one-half (8 1/2) by eleven (11) inch paper. The statement shall be included if the information is divulged to a third party and as long as the original information is a part of the file.

(c) If either the employer or employee knowingly places or causes to be placed in the personnel record information that is false, the employer or employee, whichever is appropriate, has a remedy through legal action to have that information expunged.

Sec. 9. (a) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee without written notice to the employee as provided in this section.

(b) The written notice to the employee must be by first class mail to the employee's last known address and shall be mailed on or before the day the information is divulged from the personnel record.

(c) This section does not apply if one (1) of the following occurs:

(1) The employee has specifically waived written notice as

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part of a written, signed employment application with another employer.

(2) The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.

(3) Information is requested by a government agency as a result of a claim or complaint by an employee.

(d) An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered in a legal action or arbitration to a party in that legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four (4) years old.

Sec. 10. (a) An employer shall not gather or keep a record of an employee's associations, political activities, publications, or communications of activities outside employment, except if the information is:

(1) submitted in writing; or

(2) authorized to be kept or gathered in writing;

by the employee to the employer. This prohibition on records does not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer and that interfere with the performance of the employee's duties or with duties of other employees.

(b) A record that is kept by the employer as permitted under subsection (a) shall be part of the personnel record.

Sec. 11. (a) If an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation and the employer is engaged in an investigation, the employer may keep a separate file of information relating to the investigation. Upon completion of the investigation or after two (2) years, whichever comes first, the employee shall be notified that an investigation was or is being conducted of the suspected criminal activity. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in the file shall be destroyed.

(b) If the employer is a criminal justice agency (as defined in IC 5-2-4-1(c)) that is involved in the investigation of an alleged criminal activity or the violation of an agency rule by the employee, the employer shall maintain a separate confidential file of information relating to the investigation. Upon completion of the investigation, if disciplinary action is not taken, the employee shall



1 be notified that an investigation was conducted. If the investigation
 2 reveals that the allegations are unfounded or unsubstantiated, or
 3 if disciplinary action is not taken, the separate file must contain a
 4 notation of the final disposition of the investigation and
 5 information in the file shall not be used in any future consideration
 6 for promotion, transfer, additional compensation, or disciplinary
 7 action.

8 **Sec. 12. This chapter shall not be construed to:**

- 9 (1) diminish a right of access to records as provided in
- 10 IC 5-14-3 or as otherwise provided by law; or
- 11 (2) conflict with IC 5-14-3-4(b)(8).

12 **Sec. 13. If an employer violates this act, an employee may**
 13 **commence an action in a circuit or superior court to compel**
 14 **compliance with this act. A court with jurisdiction in:**

- 15 (1) the county in which the employee resides;
- 16 (2) the county in which the employee is employed; or
- 17 (3) the county in which the personnel record is maintained;
- 18 has jurisdiction to hear the matter.

19 **Sec. 14. The court shall award an employee prevailing in an**
 20 **action under this chapter the following:**

- 21 (1) For a violation of this chapter, actual damages plus costs.
- 22 (2) For a willful and knowing violation of this chapter, an
- 23 amount equal to the weekly pay of the employee, computed at
- 24 the usual and customary rate of pay and the usual and
- 25 customary hours worked per week, plus costs, reasonable
- 26 attorney's fees, and actual damages.

27 **Failure to comply with an order of the court may be punished as**
 28 **contempt of court.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1796, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 8, nays 3.

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